## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

| UNITED STATES OF AMERICA, | ) | <b>CASE NO. 8:11CR209</b> |
|---------------------------|---|---------------------------|
| Plaintiff,                | ) |                           |
| vs.                       | ) | TENTATIVE FINDINGS        |
| HECTOR PENA-MEDINA,       | ) |                           |
| Defendant.                | ) |                           |

The Court has received the Revised Presentence Investigation Report ("PSR"), the Defendant's objections thereto (Filing No. 44). The government has adopted the PSR (Filing No. 51). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 25, arguing that he should not be held responsible for 94.8 grams of actual methamphetamine. However, under the Defendant's plea agreement he agreed that he is responsible for at least 50 but not more than 150 grams of actual methamphetamine. (Filing No. 36, at 4.) Also, the Court notes that, subsequent to the Defendant's objections, the PSR was revised in part to reflect a drug quantity of 85.5 grams of actual methamphetamine. The objection is denied.

## IT IS ORDERED:

- 1. The Defendant's objections to ¶ 25 of the PSR are denied;
- 2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are

required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

- 3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and
- 4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 13<sup>th</sup> day of January, 2012.

BY THE COURT:

s/ Laurie Smith Camp Chief United States District Judge